



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

February 3, 2023

The Honorable Tony Thurmond
Superintendent of Public Instruction
California Department of Education
1430 N Street, Suite 5602
Sacramento, CA 95814-5901

Dear Superintendent Thurmond:

The U.S. Department of Education (Department) received your written plan for a reasonable level of tolerance when calculating whether the California Department of Education (CDE) has met State maintenance of equity requirements under the American Rescue Plan Act of 2021 (ARP Act). This written plan applies only to a subset of California's local educational agencies (LEAs).

The ARP Act State maintenance of equity requirements help ensure that State funding supports the students in LEAs with high concentrations of poverty who have been subject to longstanding opportunity gaps in our education system and have also experienced the greatest impacts from the COVID-19 pandemic. Moreover, the ARP Act State maintenance of equity requirements are vital for ensuring that States maintain funding to address the impact of the pandemic on students' education, and for protecting students in high-poverty LEAs from disproportionate cuts if reductions in State effort do occur.

The Department determined that it is consistent with the State maintenance of equity requirements to allow a State educational agency (SEA) to calculate whether it has maintained equity with respect to its very small high-need and highest-poverty LEAs within a reasonable "tolerance level." The Department's determination is based on the possibility of significant volatility in the calculated per-pupil funding amounts for very small LEAs caused by small changes in student enrollment, which may be unrelated to whether an SEA has achieved the intent to maintain equity in funding. (See *Frequently Asked Questions, American Rescue Plan Elementary and Secondary School Emergency Relief Program, Maintenance of Equity Requirements*, July 26, 2022, Question 21(a).)

CDE cites two types of LEAs that would be captured by its small LEA tolerance proposal:

- 1) LEAs that receive the State's Necessary Small Schools (NSS) funds: These LEAs are funded in bands based on a combination of average daily attendance (ADA) and the number of full-time teachers or certificated employees, rather than just ADA. The NSS

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alternative funding mechanism is intended to recognize that there are certain, minimum costs to operate a school that are not directly tied to ADA, which may confound per-pupil funding calculations used for determining maintenance of equity for those very small LEAs.

- 2) County Offices of Education (COEs), which are legally constituted as LEAs, but have a unique funding profile that is primarily based not on the ADA for students directly served by the COE, but rather on the number of districts countywide and the ADAs of those districts.

CDE asserts that for both LEA types: 1) calculated staffing and per-pupil funding amounts are significantly affected by small changes in student enrollment; and 2) resulting data are unreliable indicators of whether the SEA has achieved the intent of maintaining equity in funding across LEAs.

Accordingly, CDE proposes three tolerance levels based on ADA:

- 1) For LEAs with a rounded ADA of 25 or fewer students, CDE proposes to tolerate a 55% reduction in per-pupil funding from year to year.
- 2) For LEAs with a rounded ADA of 100 or fewer students, CDE proposes to tolerate a 20% reduction in per-pupil funding from year to year.
- 3) For LEAs with a rounded ADA of 500 or fewer students, CDE proposes to tolerate a 15% reduction in per-pupil funding from year to year.

After reviewing CDE's tolerance proposal, including the data submitted, the unique circumstances in the State, and our further State-specific analysis, I have determined that the proposed approach for these small LEAs includes reasonable levels of tolerance when calculating whether California has met State maintenance of equity requirements.

We appreciate your diligence in developing this proposal. If you have any questions, please contact your program officer at: California.OESE@ed.gov.

Sincerely,

Laura Jimenez

Laura Jimenez
Director, Office of State and Grantee Relations
Office of Elementary and Secondary Education